

Smriti Patel and Poonam Patidar Vs State of Madhya Pradesh and Others

Court: Madhya Pradesh High Court

Date of Decision: May 7, 2010

Acts Referred: Advocates Act, 1961 " Section 24, 49(1), 7(1)

Constitution of India, 1950 " Article 14, 15, 15(4), 16, 38

Legal Education Rules, 2008 " Rule 28

Rashtriya Vidhi Sansthan Vishwavidyalaya Adhiniyam, 1997 " Section 18

Citation: AIR 2011 MP 87 : (2010) ILR (MP) 37 : (2010) 3 MPHT 357

Hon'ble Judges: Brij Kishore Dubey, J; A.K. Mishra, J

Bench: Division Bench

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

Arun Mishra, J.

The writ petitions have been filed by the petitioners to challenge validity of eligibility criteria in respect of the age

prescribed for the candidates of OBC category not to be more than 20 years for the purpose of Common Law Admission Test, 2010 (hereinafter

referred to as "CLAT").

2. The petitioners have been debarred from appearing in examination being more than 20 years of age.

3. Facts are being referred to from W.P. No. 5817/2010. It is averred in the petition that the petitioner belongs to OBC category, her age is 22

years. She has claimed that she is entitled for the same benefit as given to SC/ST category candidates, for whom the age has been prescribed to be

22 years. The National Law Institute University, Bhopal has fixed the age limit for general and OBC category candidates to be 20 years whereas

for SC/ST category candidates, the age has been prescribed to be 22 years. It is submitted that prescribing the age limit differently for the

candidates belonging to OBC and SC/ST categories, is against the provisions of Rashtriya Vidhi Sansthan Vishwavidyalaya Adhiniyam, 1997

(hereinafter referred to as "Adhiniyam, 1997") by which respondent No. 2 University is governed. Different age could not have been prescribed

for the candidates belonging to SC/ST category and OBC category, as they stand on the same footing. CLAT, 2009 was conducted by NALSAR

University of Hyderabad wherein the age limit for SC/ST and OBC category candidates has been prescribed 22 years. Section 18 of Adhiniyam,

1997 has been relied upon, in which same meaning has been given to SC/ST and OBC category candidates as assigned to them in the M.P. Public

Service (SC/ST & OBC), Reservation Act, 1994, thus, respondents ought to have fixed the age limit for the OBC category candidates to be 22

years. The University cannot go beyond the statutory provisions. Petitioner has prayed that respondent No. 2 University be directed to change the

eligibility criteria with respect to the OBC category candidates and to prescribe the age of 22 years. Petitioner be permitted to appear in the

examination. By way of amendment, prayer has been made to quash order (P-7) dated 21-4-2010, by which petitioner has been debarred from

appearing in the examination of CLAT, 2010.

4. In the return filed by respondent No. 2, it is contended that Convener CLAT has not been joined as a party to the writ petition. CLAT has

taken a decision to fix the eligibility criteria for general and OBC category candidates in the light of the decision of Apex Court in Varun Bhagat v.

Union of India, common examination system for all the National Law Schools has been advised, Memorandum of Understanding (R-2/1) has been

reached on 23-11-2007. CLAT has been functioning efficiently for the past two years with one Common Entrance Examination and one Central

Counselling System for admission in seven National Law Schools. The Memorandum of Understanding dated 23-11-2007 has been agreed upon

by all the National Law Universities which are statutory body and running seven Law Schools. The Core Committee consisting of the Vice

Chancellors of all the National Law Universities, shall have the power to decide and prescribe all the policies in respect of CLAT. Furthermore,

power has been granted to the Core Committee of CLAT to monitor implementation of its decision from time to time. The Core Committee of

CLAT in its meeting dated 8/9-11-2009 discussed the various agendas for CLAT as per resolution (R-2/2). Item No. 1 deals with the decision of

Core Committee that maximum age limit for OBC category candidates would be the same as for general category candidates and thus the

maximum age limit for OBC candidates was reduced from 22 years to 20 years. Accordingly, in the CLAT Brochure, 2010 criteria for OBC

category candidates was mentioned to be 20 years as on 1-7-2010. The decision of Core Committee is equally binding upon all the National Law

Universities who participated in CLAT examination. There was one window system for all the admission forms. The age of 20 years for general

and OBC category candidates has been adhered to in all the National Law Schools. Different age cannot be prescribed for admission in National

Law School at Bhopal, they have to adhere to the norms laid down by CLAT.

5. It is further contended that Rule 28 of Schedule III of the Rules of Legal Education, 2008 (hereinafter referred to as "the Rules of 2008")

formulated by the Bar Council of India prescribed maximum age of 22 years for OBC, thus the submission that age prescription of 20 years for

OBC by the Committee is contrary to Rules of Legal Education, 2008, is misconceived and devoid of any substance. Rule 28 makes it clear that

maximum age which is prescribed to be 22 years is subject to conditions stipulated by the University. The Rules of Legal Education, 2008 have

been formulated by the powers vested u/s 49(1)(af), (ag) and (d) of the Advocates Act. The Bar Council of India is empowered under the

Advocates Act to prescribe the minimum qualification required for admission to a course of degree in law in the Universities. Prescription of lower

age limit for OBC category candidate, is not in contravention of the Rules of 2008 framed by the Bar Council of India. It is open to the University

to prescribe the higher qualification criteria than the minimum standard prescribed by expert body. For OBC category candidates, different

eligibility criteria can be prescribed than for SC/ST candidates. Prescription of age is not in contravention to the provision of Adhiniyam, 1997.

There is clear justification for lowering the age limit of OBC to 20 years as it has been practical experience in all the National Law Universities that

OBC candidates who appear in law schools in the age of 22 stand on a different footing from the students belonging to general category who are

merely 17 or 18 years of age. In the circumstances, it was incumbent upon the Core Committee of CLAT to reduce the upper age limit for OBC

candidates to maintain discipline in the National Law Universities as domination by the students who are elder in age was becoming rampant in

National Law Universities, thus decision of reducing the age limit for OBC category candidates is in larger public interest.

6. Shri Siddharth Gupta and Shri Nishant Jain, learned Counsel for petitioners have submitted that CLAT could not have prescribed the different

age for OBC category candidates that prescribed for SC/ST category candidates, the same contravenes the standard eligibility criteria prescribed

by the Bar Council of India as well as Section 18 of Adhiniyam, 1997. The action is also violative of Article 15(4) of the Constitution of India. In

two of the seven Universities, i.e., Chanakya National Law University, Patna and National University of Advance Law Study, Kochin, in the

brochure, the age limit prescribed for OBC category candidates is 22 years, thus different ages could not have been prescribed for CLAT, 2010

for different Universities.

7. Shri Sankalp Kochar, learned Counsel for National Law Institute University, Bhopal and Shri Pushpendra Kaurav, learned Dy. Advocate

General for State have submitted that Section 18 of Adhinyam, 1997 has not been violated nor the Bar Council of India directives contained in

Part IV of Schedule III of the Rules of 2008. CLAT has taken a decision to prescribe the same age for general and OBC category candidates in

the circumstances enumerated hereinabove. SC/ST category forms a different class than the OBC one, it was not necessary to prescribe similar

age for OBC category candidates as that of SC/ST candidates, thus writ petitions being devoid of merits, deserve dismissal.

8. First question for consideration is whether age fixed by the Core Committee for CLAT, 2010 can be said to be violative of the directives issued

by the Bar Council of India contained in Part IV of Schedule III of the Rules of 2008. Rule 28 is as follows:

28. Age on admission:

(a) Subject to the condition stipulated by a University on this behalf and the high degree of professional commitment required, the maximum age for

seeking admission into a stream of integrated bachelor of law degree program, is limited to twenty years in case of general category of applicants

and to twenty two years in case of applicants from SC/ST and Other Backward Communities.

(b) Subject to the condition stipulated by a University, and the general social condition of the applicants seeking legal education belatedly, the

maximum age for seeking admission into a stream of Three Year Bachelor Degree Course in Law, is limited to thirty years with right of the

University to give concession of 5 further years for the applicant belonging to SC or ST or any Other Backward Community.

It is clear from the aforesaid eligibility criteria prescribed by the Bar Council of India that subject to the condition stipulated by a University on this

behalf and the high degree of professional commitment required, the maximum age for seeking admission into a stream of integrated Bachelor of

law degree program, is limited to 20 years for general category candidates and 22 years for SC/ST and Other Backward Communities. The Bar

Council of India was conscious of the fact that it is prescribing the said eligibility criteria subject to the condition stipulated by the Universities. The

Bar Council of India has not intended to supersede the condition stipulated by the University on this behalf aiming for high degree of professional

commitment. Moreover, it has prescribed the maximum age. It is open to the University to prescribe its own criteria by fixing age limit below

aforesaid maximum prescribed by Bar Council of India.

9. The Common Entrance Law Test has been conducted on the basis of Apex Court decision in Varun Bhagat v. Union of India (supra). Pursuant

thereto a Memorandum of Understanding (R-2/1) has been reached on 23-11-2007. As per Clause 5 of Memorandum of Understanding, there

shall be a committee, to be known as the Core Committee for CLAT for the purpose of deciding and prescribing all policies in respect of the

CLAT. The decision has been taken in the meeting dated 8/9-11-2009 that maximum age limit for OBC category candidates should be the same

as that of general category candidates. Some of the State Governments have prescribed the higher age limit for OBC category candidates, the

concerned Vice Chancellor should try to persuade their States to get the maximum age reduced for OBC candidate. Minimum percentage of

marks in qualifying examination has also been laid down which is 50% for general category candidates and 45% for the candidates of

SC/ST/OBC/PWD category. The decision has been taken by the CLAT in the larger public interest. 20 years was also the age prescribed for

CLAT, 2008 for OBC as well as general category candidates. This Court did not grant interim stay in W.P. No. 2849/2008. The decision has

been taken so as to maintain congenial and healthy environment amongst the students of National Law Universities. It also appears that it aims for

achieving the objective that after passing of 12th Class Examination, the students should decide whether they want to make law as their career not

before they undergo graduation course. Normally 12th class examination is passed at the age of 17-18 years, thus prescribing the age of 20 years

for OBC and general category candidates has purpose behind it.

10. It is permissible to prescribe higher qualification criteria than minimum standard prescribed by the expert body like Bar Council of India etc.

The Apex Court in State of Tamil Nadu and Another Vs. S.V. Bratheep (Minor) and Others, , has considered the question of eligibility

qualifications fixed by the State Government vis-a-vis to the norms fixed by All India Council of Technical Education (for short "AICTE"). The

State Government prescribed higher qualification than what had been prescribed by AICTE. The Apex Court has laid down that if higher minimum

is prescribed by the AICTE, it cannot be said that it is in any manner adverse to the standards fixed by the AICTE or reduced the standard fixed

by it. The action of the State was upheld. The Apex Court in Bar Council of India Vs. Board of Mang. Dayanand Coll. of law and Others, , has

referred to Sections 7(1)(h), (i), 24, 49(1)(af), (d) of Advocates Act and the rules framed by the Bar Council of India contained in Part IV of

Schedule III of the Rules. It has been observed that the Bar Council of India retains adequate power to control the course of studies in law, the

power of inspection, the power of recognition of degrees and the power to deny enrollment to law degree-holders, unless the University from

which they pass out is recognized. The Bar Council of India is concerned with the standards of the legal profession and the equipment of those

who seek entry into that profession. The Bar Council of India is also thus concerned with the legal education in the country. The Apex Court in Dr.

Preeti Srivastava and Anr. v. State of M.P. and Ors. and other connected matters Dr Preeti Srivastava and Another Vs. State of M.P. and

Others, , has laid down that "eligibility" and "qualifications" have been used interchangeably in some cases and in some cases distinction has been

made between them. It has also been laid down that once the minimum standards are laid down by the authority having the power to do so, any

further qualifications laid down by the State, which will lead to the selection of better students, cannot be challenged on the ground that it is

contrary to what has been laid down by the authority concerned. But the action of the State is valid because it does not adversely impinge on the

standards prescribed by the Appropriate Authority. Minimum qualifying marks are necessary. It is not possible to agree with the proposition that

prescribing no minimum qualifying marks for admission for the Scheduled Castes and the Scheduled Tribes would not have an impact on the

standard of education in the medical colleges. In the instant case criteria laid down by the CLAT cannot be said to have adversely impinged upon

the standard prescribed by the Bar Council of India.

11. In D.N. Chanchala Ors. Vs. The State of Mysore and Others, , it has been laid down by the Apex Court that the rules cannot be challenged

for providing requirements over and above the minimum qualifications laid down by the Universities in the State for eligibility for admission. In R.

Chitralekha and Another Vs. State of Mysore and Others, , it has been laid down that the State Government has power to prescribe machinery

and criteria for admission to the Medical and Engineering Colleges run by it. In Shri Ajay Malik Vs. Punjab University and others, , High Court of

Punjab and Haryana has laid down that University can prescribe higher qualification than minimum qualification prescribed by Bar Council of India.

It is open to the University in the matter of admission to the L.L.B. course to prescribe higher qualification than one prescribed by Bar Council of

India. In Sobhana Kumar S. and Others Vs. The Mangalore University and Others, , the High Court of Karnataka has laid down to the similar

effect that University can prescribe higher conditions of eligibility than one prescribed by Bar Council. This Court in Pragati Kiran Naagar v. Dr.

Hari Singh Gaur University, Sagar 2005 (3) MPLJ 87, has taken a similar view that University can prescribe the higher qualification than the

minimum one prescribed by AICTE.

12. In the instant case the Bar Council of India itself has mentioned in Rule 28, contained in Part IV of Schedule III of the Rules of 2008, that it is

prescribing the age ""subject to the condition stipulated by the University on this behalf and high degree of professional commitment required"" and it

has prescribed the ""maximum age"", thus in our opinion, it was open to CLAT to lay down the criteria for all the National Law Schools for

admission of general category and OBC category candidates that age be limited to 20 years. It does not contravene the directives of the Bar

Council of India that for OBC category candidates also age should be 22 years, as the Bar Council of India itself has laid down that it's

recommendation was subject to the condition stipulated by the University for achieving the higher standards. In our opinion by prescribing the age

of 20 years, CLAT has aimed high degree of professional commitment by catching the students immediately after passing 12th Examination as

normally the students clear the 12th exams at the age of 17-18 years and for maintaining the discipline in the college, decision has been taken in the

public interest, same is not violative of the aforesaid Rule 28 of the Rules of 2008 framed by the Bar Council of India.

13. Coming to the submission that the action is violative of Section 18 of Adhiniyam, 1997. Section 18 of Adhiniyam, 1997 is quoted below:

18. Reservation of Seats.- The Executive Council may, by Regulations, provide for reservations of seats to the residents of the State of Madhya

Pradesh and Members of Scheduled Castes, Scheduled Tribes and Other Backward Classes.

Explanation: The words ""Scheduled Castes, Scheduled Tribes and Other Backward Classes"" shall have the same meaning assigned to them in the

Madhya Pradesh Lok Seva (Anusuchit Jatiyon, Anusuchit Jan Jatiyon Aur Anya Picchade Vargon Ke Liye Arakshan) Adhiniyam, 1994 (No. 21

of 1994).

It is apparent that Section 18 is not dealing with the age, it deals with the reservations of seats to the residents of the State of Madhya Pradesh and

members of Scheduled Castes, Scheduled Tribes and Other Backward Classes. The words ""Scheduled Castes, Scheduled Tribes and Other

Backward Classes"" shall have the same meaning assigned to them in M.P. Public Service (SC, ST and OBC) Reservation Act, 1994. Section 18

cannot be said to be laying down that it deals with the prescription of the age but it only deals with the SC/ST and OBC shall have the same

meaning assigned to them in the said Act of 1994, thus it was open to CLAT and Core Committee of University to lay down the age criteria for

CLAT, 2010.

14. Coming to the submission raised by Shri Siddharth Gupta, learned Counsel appearing for petitioners that the eligibility criteria is a different

matter than the qualification to be prescribed and once eligibility criteria has been relaxed by the Bar Council of India to be 22 years that is as per

imperative of Article 15(4) of the Constitution of India, even otherwise fixation of age for SC/ST and OBC category ought to have been the same

as 22 years. He has relied upon the decision of Apex Court in Ram Bhagat Singh and Another Vs. State of Haryana and Another, , in which Apex

Court has laid down that though a high efficiency is required in the judicial service but at the same time, if possible, in order to ensure that there is

equality of opportunity, a percentage should be fixed without, in any way, compromising with the efficiency required for the job which will be

attainable by backward communities, that is to say, Scheduled Castes and Scheduled Tribes. Government must take decision objectively,

rationally and by a conscious process.

In the instant case a conscious decision has been taken by CLAT in the public interest which cannot be said to be illegal or arbitrary or violating

provisions of Article 15(4) of Constitution of India in any manner. Reliance has also been placed on a decision of Apex Court in Jitendra Kumar

Singh and Another Vs. State of U.P. and Others, , in which it has been laid down by the Apex Court that the concession in fee and age relaxation

only enabled certain candidates belonging to the reserved category to fall within the zone of consideration. The concession in age did not in any

manner tilt the balance in favour of the reserved category candidates, in the preparation of final merit/select list. It is permissible for the State in

view of Articles 14, 15, 16 and 38 of the Constitution of India to make suitable provisions in law to eradicate the disadvantages of candidates

belonging to socially and educationally backward classes. The concessions and relaxations place the candidates at par with General Category

candidates. It is only thereafter the merit of the candidates is to be determined without any further concessions in favour of the reserved category

candidates. The relaxation in age limit is merely to enable the reserved category candidate to compete with the general category candidate, all other

things being equal. Such relaxations cannot deprive a reserved category candidate of the right to be considered as a general category candidate on

the basis of merit in the competitive examination.

The question in the instant case is not that the candidates of OBC or SC/ST category be treated as general category candidates, in case they have

performed better and their performance is good for selection in general category, in that event obviously they have to be treated as general

category candidates.

15. In the case of Ashoka Kumar Thakur Vs. Union of India (UOI) and Others, , decision of Indra Sawhney and Ors. v. Union of India and Ors.

1992 Supp. (3) SCC 217, has been referred to, in which the Apex Court has observed that affirmative action to redress the conditions of

backward classes of citizens may be adopted either by a programme of preferential treatment extending certain special advantages to them or by

reservation of quotas in their favour to the total exclusion of everybody outside the favoured groups. Preference without reservation may be

adopted in favour of the chosen Classes of citizens by prescribing for them a longer period for passing a test or by awarding additional marks or

granting other advantages like relaxation of age or other minimum requirements to redeem their backwardness.

In the instant case relaxation has already been given of marks in qualifying examination and reservation is also there for OBC category candidates.

Fixation of age of 20 years cannot be said to be the condition warranting interference considering the purpose sought to be achieved and

particularly when it is for admission to the seven National Law Schools of India and also considering that students pass the qualifying examination

of 12th at the age of 17-18 years, they have still 2-3 more years to stake their claim for CLAT, thus fixation of age at 20 years cannot be said to

be depriving of any of the rights of the students envisaged under Article 15(4) of the Constitution of India.

16. Resultantly, in our opinion, the writ petitions are bereft of merits. Prescription of the age of 20 years for the candidates of general and OBC

category by Common Law Admission Test cannot be said to be violative of Section 18 of Adhinyam, 1997, Rule 28 of Rules of Legal Education,

2008, nor it can be said to be violative of Article 15(4) of the Constitution of India. Writ petitions being devoid of merit, deserve dismissal. They

are hereby dismissed. However, parties are left to bear their own costs as incurred of these petitions.